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DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-853]

Citric Acid and Certain Citrate Salts from Canada: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: In response to a timely request by one manufacturer/exporter, Jungbunzlauer Canada Inc. (JBL Canada), the Department of Commerce (the Department) is conducting the second administrative review of the antidumping duty order on citric acid and certain citrate salts (citric acid) from Canada with respect to JBL Canada. The review covers the period May 1, 2010, through April 30, 2011. We preliminarily determine that JBL Canada made sales below normal value (NV).

If the preliminary results are adopted in the final results of the administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on the preliminary results.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Kate Johnson, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S.

Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482-4007 or (202) 482-4929, respectively.

## SUPPLEMENTARY INFORMATION:

### Background

In response to a timely request by JBL Canada, on June 28, 2011, the Department published in the Federal Register a notice of initiation of an administrative review of the antidumping duty order on citric acid from Canada with respect to JBL Canada covering the period May 1, 2010, through April 30, 2011. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 76 FR 37781 (June 28, 2011) (Initiation Notice).

On June 29, 2011, we issued the antidumping duty questionnaire to JBL Canada. In August 2011, we received responses to sections A (i.e., the section covering general information about the company), B (i.e., the section covering comparison-market sales), and C (i.e., the section covering U.S. sales).<sup>1</sup> On September 22, 2011, we issued to JBL Canada a supplemental questionnaire with respect to sections A, B, and C of the original questionnaire and we received a response on October 6, 2011.

### Scope of the Order

The scope of this order includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of this order also includes all forms of crude calcium citrate, including

dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of this order does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product. The scope of this order includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

#### Period of Review

The period of review (POR) is May 1, 2010, through April 30, 2011.

#### Duty Absorption

On July 28, 2011, the petitioners<sup>2</sup> requested that the Department determine whether

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<sup>1</sup> No responses to sections D or E of the questionnaire (i.e., cost of production information and further manufacturing information, respectively).

<sup>2</sup> Archer Daniels Midland Company, Incorporated, and Tate & Lyle Americas LLC.

antidumping duties had been absorbed during the POR. Section 751(a)(4) of the Tariff Act of 1930, as amended (the Act), provides for the Department, if requested, to determine during an administrative review initiated two or four years after the publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. This review was initiated two years after the publication of the order. See Initiation Notice; Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China: Antidumping Duty Orders, 74 FR 25703 (May 29, 2009) (Citric Acid Duty Orders).

In determining whether the antidumping duties have been absorbed by JBL Canada, we presume the duties will be absorbed for constructed export price (CEP) sales that have been made at less than NV. This presumption can be rebutted with evidence (e.g., an agreement between the affiliated importer and unaffiliated purchaser) that the unaffiliated purchaser will pay the full duty ultimately assessed on the subject merchandise. See, e.g., Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part, 70 FR 39735, 39737 (July 11, 2005), unchanged in Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan, 70 FR 73727 (December 13, 2005). On August 9, 2011, we requested proof that JBL Canada's unaffiliated purchasers would ultimately pay the antidumping duties to be assessed on entries during the POR. On September 20, 2011, JBL Canada responded to our request for information and stated that the sales documentation provided in its questionnaire response shows that antidumping duties are not being absorbed by JBL Canada through its affiliated U.S. importer.

Based on our review of the documentation contained in JBL Canada's questionnaire response (see Exhibit A-12 of the August 4, 2011, questionnaire response), we preliminarily determine that antidumping duties were not absorbed during the POR. See, e.g., Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Preliminary Results, Partial Rescission, and Request for Revocation, in Part, of the Fourth Administrative Review, 75 FR 12206, 12207-12208 (March 15, 2010), unchanged in Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Results and Partial Rescission of Antidumping Duty Administrative Review, 75 FR 47771 (August 9, 2010). Because much of the information contained in JBL Canada's September 20, 2011, duty absorption response is business proprietary, additional analysis of this issue is contained in the memorandum entitled "Preliminary Results Margin Calculation for Jungbunzlauer Canada Inc.," dated contemporaneously with this notice.

#### Comparisons to Normal Value

To determine whether JBL Canada's sales of citric acid from Canada to the United States were made at less than NV, we compared the CEP to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice.

Pursuant to section 777A(d)(2) of the Act, for JBL Canada we compared the CEPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade. See discussion below.

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by JBL Canada covered by the description in the "Scope of the Order" section, above, to be foreign

like products for purposes of determining appropriate product comparisons to U.S. sales.

Pursuant to 19 CFR 351.414(e)(2), we compared JBL Canada's U.S. sales of citric acid to its sales of citric acid made in the home market. Where there were no contemporaneous sales within the definition of 19 CFR 351.414(e)(2)(i), pursuant to 19 CFR 351.414(e)(2)(ii) and (iii), we compared sales within the contemporaneous window period, which extends from three months prior to the month of the U.S. sale until two months after the sale.

In making the product comparisons, we matched foreign like products based on the physical characteristics reported by JBL Canada in the following order: type, form, grade, and particle size.

#### Constructed Export Price

For all U.S. sales made by JBL Canada, we calculated CEP in accordance with section 772(b) of the Act because the subject merchandise was first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

We based CEP on packed prices to unaffiliated purchasers in the United States. Where appropriate, we adjusted the starting prices for billing adjustments and rebates, in accordance with 19 CFR 351.401(c). We made deductions for movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight expenses, foreign inland insurance expenses, U.S. brokerage and handling expenses, U.S. inland freight expenses, U.S. warehousing expenses, and U.S. inland insurance expenses. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted

those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (e.g., imputed credit expenses), and indirect selling expenses (including inventory carrying costs).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by JBL Canada and its U.S. affiliate on their sales of the subject merchandise in the United States and the profit associated with those sales. See memorandum entitled “Preliminary Results Margin Calculation for Jungbunzlauer Canada Inc.,” dated contemporaneously with this notice.

#### Normal Value

##### A. Home Market Viability and Selection of Comparison Market

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that, pursuant to 19 CFR 351.404(b), JBL Canada had a viable home market during the POR. Consequently, pursuant to section 773(a)(1)(B)(i) of the Act and 19 CFR 351.404(c)(i), we based NV on home market sales.

##### B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales of foreign like products at the same level of trade (LOT) as the export price or CEP. Sales are made at different LOTs if they are made at different marketing

stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. See id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 61731, 61732 (November 19, 1997) (Plate from South Africa). In order to determine whether the comparison-market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (i.e., the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison-market sales (i.e., where NV is based on either home market or third country prices),<sup>3</sup> we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See Micron Technology, Inc. v. United States, 243 F.3d 1301, 1314 (Fed. Cir. 2001). When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price

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<sup>3</sup> Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative expenses, and profit for CV, where possible.



comparability (i.e., no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See Plate from South Africa, 62 FR at 61732-33.

In this administrative review, we obtained information from JBL Canada regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed by the respondent and its affiliates for each channel of distribution.

During the POR, JBL Canada reported that it sold citric acid to end-users and distributors through two channels of distribution in both the U.S. and home markets. JBL Canada stated that its selling process was essentially the same for both channels of distribution. Because the details of JBL Canada's reported selling functions for each channel of distribution are business proprietary, our analysis of these selling functions for purposes of determining whether different LOTs exist is contained in a separate memorandum entitled "Preliminary Level-of-Trade Analysis," dated contemporaneously with this notice.

Based on our analysis, we found that the selling functions JBL Canada performed for each of its channels of distribution in the U.S. market were essentially the same, with the exception of one selling function which we determined was not sufficient to warrant an LOT distinction between these channels. Therefore, we determined preliminarily that there is only one LOT (for CEP sales) in the U.S. market. Similarly, we found that the selling functions that JBL Canada (and its affiliates) performed for each of the channels of distribution in the home market were essentially the same, with the exception of certain selling activities which we determined were not sufficient to warrant an LOT distinction between these channels.

Therefore, we preliminarily determined that there is only one LOT in the home market.

In comparing the home market LOT to the CEP LOT, we found that the selling activities performed by JBL Canada (and its affiliates) for its CEP sales were significantly fewer than the selling activities that it performed for its home market sales, and that the home-market LOT was more remote from the factory than the CEP LOT. Accordingly, we considered the CEP LOT to be different from the home-market LOT and to be at a less advanced stage of distribution than the home-market LOT.

Therefore, we could not match CEP sales to sales at the same LOT in the home market, nor could we determine an LOT adjustment based on JBL Canada's home market sales because there is only one LOT in the home market, and it is not possible to determine if there is a pattern of consistent price differences between the sales on which NV is based and the home market sales at the LOT of the export transaction. See section 773(a)(7)(A) of the Act. Furthermore, we have no other information that provides an appropriate basis for determining an LOT adjustment. Consequently, because the available data do not form an appropriate basis for making an LOT adjustment but the home market LOT is at a more advanced stage of distribution than the CEP LOT, we find it is appropriate to make a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act. The CEP offset is calculated as the lesser of: (1) the indirect selling expenses incurred on the home market sales, or (2) the indirect selling expenses deducted from the starting price in calculating CEP.

#### Calculation of Normal Value Based on Comparison-Market Prices

We based NV for JBL Canada on packed prices to unaffiliated customers in the home market. Where appropriate, we adjusted the starting prices for billing adjustments and rebates,

in accordance with 19 CFR 351.401(c). We made deductions, where appropriate, from the starting price for movement expenses, including inland freight and inland insurance, under section 773(a)(6)(B)(ii) of the Act.

We made adjustments under section 773(a)(6)(C) of the Act for differences in circumstances-of-sale for imputed credit expenses, where appropriate. We also deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act. Finally, as discussed in the “Level of Trade” section above, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses incurred on the home-market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

#### Currency Conversion

It is our normal practice to make currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank.

#### Preliminary Results of the Review

We preliminarily determine that a weighted-average dumping margin exists for JBL Canada for the period May 1, 2010, through April 30, 2011, as follows:

<u>Manufacturer/Exporter</u>	<u>Percent Margin</u>
Jungbunzlauer Canada Inc.	2.34

#### Disclosure and Public Hearing

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. See 19 CFR

351.224(b). Pursuant to 19 CFR 351.309, interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs. Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: 1) a statement of the issue; 2) a brief summary of the argument; and 3) a table of authorities.

Interested parties who wish to request a hearing or to participate if one is requested must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: 1) the party's name, address and telephone number; 2) the number of participants; and 3) a list of issues to be discussed. See 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the respective case briefs.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

#### Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department intends to issue appropriate appraisement instructions for the company subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

For those sales where JBL Canada reported the entered value of its U.S. sales, we calculated importer-specific ad valorem duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales to that importer. For those sales where the respondent did not report the entered value of its U.S. sales, we calculated importer-specific or customer-specific per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates are de minimis, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific ad valorem ratios based on the estimated entered value.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above de minimis (i.e., at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is de minimis (i.e., less than 0.50 percent). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its “automatic assessment” regulation on May 6, 2003. See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003) (Assessment Policy Notice). This clarification will apply to entries of subject merchandise during the POR produced by the company included in these final results of review for which the reviewed company did not know that the merchandise it sold to the

intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States.

In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate effective during the POR if there is no rate for the intermediary involved in the transaction. See Assessment Policy Notice for a full discussion of this clarification.

#### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: 1) the cash deposit rate for the company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, de minimis within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; 2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, a previous review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 23.21 percent, the all-others rate made effective by the LTFV investigation. See Citric Acid Duty Orders. These deposit requirements shall remain in effect until further notice.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties

prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

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Paul Piquado  
Assistant Secretary  
for Import Administration

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January 31, 2012  
(Date)

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